IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

Appellant/Cross-Respondent,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent/Cross-Appellant,

And

AMERICAN BROADCASTING COMPANIES, INC.; THE ASSOCIATED PRESS; CABLE NEWS NETWORK, INC.; CHESAPEAKE MEDIA I, LLC, D/B/A KSNT-TV; LOS ANGELES TIMES COMMUNICATIONS, LLC; THE NEW YORK TIMES COMPANY; SCRIPPS BROADCASTING HOLDINGS, LLC; WP COMPANY, LLC, D/B/A THE WASHINGTON POST,

Respondents.

Supreme Court No. 75518

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APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable Stephanie Miley, District Judge

District Court Case Nos. A-17-764030-C; and A-17-764169-C

RESPONDENTS' COMBINED OPPOSITION TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION TO STRIKE AND MOTION TO STAY BRIEFING AND JOINDER TO RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S OPPOSITION TO SAME

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Docket 75518 Document 2019-02112

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Respondents American Broadcasting Companies, Inc., The Associated Press, Cable News Network, Inc., Los Angeles Times Communications, LLC, and The New York Times Company (collectively, the "Media Coalition") hereby join Respondent/Cross-Appellant Las Vegas Review-Journal's Opposition to Appellant/Cross-Respondent's Motion to Strike Appendices and Stay Briefing (the "LVRJ Response") in its entirety, and write separately below to address the Media Coalition's Appendix in particular.

I. INTRODUCTION

Appellant Las Vegas Metropolitan Police Department ("Metro") posits in this appeal, among other things, that Metro is entitled to recover an extraordinary use fee under NRS § 239.055 (the "Extraordinary Use Statute"). As part of its response to this argument, the Media Coalition's Appendix included a single brief (with attached exhibits) from the underlying district court proceeding, totaling twenty-nine pages.[1] The Exhibits demonstrate Metro's failure to comply with the facial requirements of the Extraordinary Use Statute and the district court's March 2 and 9, 2018 orders (the "Orders"), thereby precluding Metro from recovering any extraordinary use fee

[1] The Media Coalition will refer to the documents attached to the Media Coalition's Appendix as the "Exhibits".

The inclusion of the Exhibits in the Media Coalition's Appendix was entirely appropriate. As a threshold matter, the Exhibits are necessary to respond to Metro's claimed entitlement in this appeal to an extraordinary use fee, rendering the inclusion of the Exhibits proper under NRAP 30(b)(4). In addition, this Court may properly consider the Exhibits because they are subject to judicial notice given that they were filed the Court below (though after the Notice of Appeal), and in this Court as part of Metro's earlier Emergency Petition for Writ of Prohibition in this matter (Nevada Supreme Court case no. 76023, the "Writ Proceeding").

II. LEGAL ARGUMENT

A. The Exhibits Are Necessary To Rebut Metro's Position

Under NRAP 30(b)(4), a respondent's appendix may include "*documents necessary to rebut appellant's position on appeal* which are not already included in appellant's appendix." (emphasis added)).

Here, the Media Coalition included the Exhibits in its Appendix because they are necessary to rebut Metro's position that it is entitled to an extraordinary use fee in this case. Specifically, the Exhibits show Metro's conduct while purportedly complying with the Orders, which conduct prevents Metro from recovering any extraordinary use fee.

B. This Court May Consider The Exhibits Because They Are Subject To Judicial Notice

As set forth in the LVRJ Response, "this Court may take judicial notice of facts "generally known or capable of verification from a reliable source." Mack v. Estate of Mack, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). To qualify as "judicially noticeable," the facts cited by a party must be "[c]apable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute." NRS 47.130(2)(b). Additionally, this Court may take judicial notice of records in other, different cases depending on the closeness of the connection between the two cases. Mack, 125 Nev. at 91-92 (citing Occhiuto v. Occhiuto, 97 Nev. 143, 145, 625 P.2d 568. 569 (1981)).

LVRJ filed the Exhibits in district court case number A-17-764030-W, the same case that Metro is appealing here. Indeed, the Exhibits even bear the district court's filing stamp. RA 0001. Moreover, the Exhibits were filed and considered in the Writ Proceeding. (See Appendix to Real Party in Interest Las Vegas Review-Journal's Response to Petitioner's Emergency Petition for Writ of Prohibition Pursuant to NRAP 21 and 27(E) at RA003-036, Supreme Court of Nevada Case Number 76023.) It is indisputable that the Writ Proceeding and the underlying case are not only closely related, but they, in fact, involve the identical set of facts. For that reason as well, the Exhibits are subject to judicial notice.

Notably, at no point has Metro ever challenged the authenticity or accuracy of the Exhibits.

C. The Court Should Not Stay Briefing Deadlines

The Media Coalition adopts the arguments set forth in the LVRJ Response in their entirety on the issue of Metro's requested stay of the briefing schedule.

CONCLUSION

For the foregoing reasons, as well as those outlined in the LVRJ Response, the Media Coalition requests that this Court deny Metro's Motion in its entirety.

Dated: January 14, 2019.

BALLARD SPAHR LLP

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CERTIFICATE OF SERVICE

I certify that this foregoing **RESPONDENTS' COMBINED OPPOSITION TO LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION TO STRIKE AND MOTION TO STAY BRIEFING AND JOINDER TO RESPONDENT/CROSS-APPELLANT LAS VEGAS REVIEW-JOURNAL'S OPPOSITION TO SAME** was filed electronically with the Nevada Supreme Court on the 14th day of January 2019. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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